

PETITION OF APPEAL FROM DECISION OF
MIAMI-DADE COUNTY COMMUNITY ZONING APPEALS BOARD
TO THE BOARD OF COUNTY COMMISSIONERS

CHECKED BY AG

AMOUNT OF FEE \$923.40

RECEIPT # 1200311466DATE HEARD: 02/26/2004BY CZAB # 5

RECEIVED
MAR 12 2004

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.

BY Adriana Guerra

DATE RECEIVED STAMP

This Appeal Form must be completed in accordance with the "Instruction for Filing an Appeal" and in accordance with Chapter 33 of the Code of Miami-Dade County, Florida, and return must be made to the Department on or before the Deadline Date prescribed for the Appeal.

RE: Hearing No. Z2003000123Filed in the name of (Applicant) Jose Milton and Jose Milton TrustName of Appellant, if other than applicant Not applicable

Address/Location of APPELLANT'S property: 6790 NW 186 Street, more particularly described in Exhibit "A" attached hereto; and 18255-18345 NW 68th Avenue, more particularly described in Exhibit "B" attached hereto.

Application, or part of Application being Appealed (Explanation): Entire Appealable Application

The Appellants, Jose Milton and Jose Milton Trust, hereby appeals the decision of the Miami-Dade County Community Zoning Appeals Board with reference to the above subject matter, and in accordance with the provisions contained in Chapter 33 of the Code of Miami-Dade County, Florida, hereby makes application to the Board of County Commissioners for review of said decision. The grounds and reasons supporting the reversal of the ruling of the Community Zoning Appeals Board are as follows: (State in brief and concise language)

See letter of appeal attached hereto and fully incorporated herein.

APPELLANT MUST SIGN THIS PAGE

Date: 3rd. day of March, 2004

Signed:

Jose Milton
JOSE MILTON TRUST
BY: JOSE MILTON, TRUSTEE3211 Ponce De Leon Boulevard, Suite 301Coral Gables Florida 33134(305) 460-6300 (305) 447-6760
Phone Fax

Signed:

Jose Milton
JOSE MILTON3211 Ponce De Leon Boulevard, Suite 301Coral Gables Florida 33134(305) 460-6300 (305) 447-6760
Phone Fax

REPRESENTATIVE'S AFFIDAVIT

If you are filing as representative of an
association or other entity, so indicate:_____
Representing_____
Signature_____
Print Name_____
Address_____
City State Zip_____
Telephone NumberSubscribed and Sworn to before me on the 12 day of March, 2004Christine B. Mrazovich
Notary Public(stamp/seal)
Commission expires:

APPELLANT'S AFFIDAVIT OF STANDING
(must be signed by each Appellant)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Before me the undersigned authority, personally appeared Jose Milton
(Appellant) who was sworn and says that the Appellant has standing to file the attached appeal of a
Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community Zoning
Appeals Board matter because of the following:

(Check all that apply)

- ☒ 1. Participation at the hearing
☒ 2. Original Applicant
☐ 3. Written objection, waiver or consent

Appellant further states they understand the meaning of an oath and the penalties for perjury, and that
under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

Dina Dominguez
Signature

DINA DOMINGUEZ
Print Name

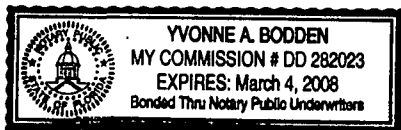
Thomas G. Costia
Signature

Thomas G. Costia
Print Name

Jose Milton
JOSE MILTON TRUST
BY: JOSE MILTON, TRUSTEE

Sworn to and subscribed before me on the 3rd day of March, 2004.

Appellant is personally know to me or has produced as _____ as
identification.



Yvonne A. Bodden
Notary
(Stamp/Seal)

Commission Expires:

APPELLANT'S AFFIDAVIT OF STANDING
(must be signed by each Appellant)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Before me the undersigned authority, personally appeared Jose Milton
(Appellant) who was sworn and says that the Appellant has standing to file the attached appeal of a
Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community Zoning
Appeals Board matter because of the following:

(Check all that apply)

- ☒ 1. Participation at the hearing
☒ 2. Original Applicant
☐ 3. Written objection, waiver or consent

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under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

[Signature]
Signature

Diana Dominguez
Print Name

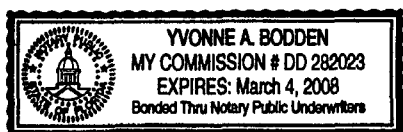
[Signature]
Signature

Thomas L Costa
Print Name

[Signature]
JOSE MILTON

Sworn to and subscribed before me on the 3rd day of March, 2004.

Appellant is personally know to me or has produced as _____ as
identification.



[Signature]
Notary
(Stamp/Seal)

Commission Expires:

BILZIN SUMBERG BAENA PRICE & AXELROD LLP

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

200 SOUTH BISCAYNE BOULEVARD, SUITE 2500 • MIAMI, FLORIDA 33131-5340

TELEPHONE: (305) 374-7580 • FAX: (305) 374-7593

E-MAIL: INFO@BILZIN.COM • WWW.BILZIN.COM

Stanley B. Price, Esquire
Direct Dial: (305) 350-2374
Direct Facsimile: (305) 351-2285
E-mail: sprice@bilzin.com

March 3, 2004

VIA HAND DELIVERY

Ms. Diane O'Quinn Williams
Miami-Dade County Department of
Planning and Zoning
Eleventh Floor
111 N.W. First Street
Miami, Florida 33128

Re: *Jose Milton & Jose Milton Trust*
Miami-Dade County Zoning Application Z2003000123
Property Folio Numbers 30-2011-003-0010 & 30-2011-005-0010

LETTER OF APPEAL

Dear Ms. Williams:

In accordance with the standards prescribed in Section 33-313 of the Code of Miami-Dade County, please accept this correspondence as our letter of appeal regarding the above-referenced Miami-Dade Zoning Application for Public Hearing as heard by the Community Zoning Appeals Board for District 5 (hereinafter the "Zoning Appeals Board") on February 26th, 2004. This firm represents Jose Milton and Jose Milton Trust (collectively the "Appellant"), owners of approximately 19.312 contiguous acres of land situated along NW 186th Street and NW 68th Avenue in Miami-Dade County.

By and through the enclosed application, the Appellant respectfully submits that the decision rendered by the Zoning Appeals Board denying Application No. Z2003000123 was not supported by substantial competent evidence and violated the essential requirements of law. As such, the Appellant respectfully requests that the challenged decision be vacated and the application be reviewed *de novo* by the Miami-Dade County Board of County Commissioners.

Ms. Diane O'Quinn Williams
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Statement of Proposed Development

The properties at issue in this appeal and made a part of Public Hearing Application Z2003000123 (the "Application") comprise two separate parcels of land including a 13.204± acre tract located at 6790 NW 186 Street (hereinafter the "Country Club Towers") together with a 6.108± acre tract located at 18255-18345 NW 68th Avenue (hereinafter the "Village Center"). The Country Club Towers property, developed in 1981, is currently improved as a gated multi-family apartment complex with occupancy levels consistently reaching full capacity. Unfortunately, however, the Village Center has not enjoyed the same level of success. Developed as a retail shopping center and office complex in 1974, the Village Center has experienced a continuing decline in occupancy over the past several years and, due to the growing amount of store vacancies at the property, has become a haven for criminal activities and a blight on the surrounding community. The application subject to this appeal, as shown on the development plans prepared by architect Salvador M. Cruxent (last dated January 8th, 2004) and made a part of the record below, seeks to improve the conditions of this area by requesting zoning approval to redevelop the Village Center into a residential apartment complex, to renovate and partially redevelop the Country Club Towers property, and to unify the two land areas into a single gated residential community. The purpose of the proposed development is to allow for a free flowing residential community where residents can share and enjoy large open green spaces and common areas, swimming pools, recreational buildings, access to and from N.W. 186th Street and N.W. 68th Avenue, an on-site neighborhood convenience store, and ample off street parking.

In order to effectuate the planned development project, the following relief was requested by the Appellant: Pertaining exclusively to the Village Center property—(1) a district boundary change from BU-1A to RU-4; Pertaining exclusively to the Country Club Towers property—(2) modification of Resolution No. 4-ZAB-98-85 substituting previously approved development plans with those submitted in conjunction with the current application; Pertaining to both the Village Center and the Country Club Towers properties—(3) an unusual use for entrance features permitting a guardhouse, a decorative fountain and separate gated entranceways that will collectively service the proposed unified residential community.

Ms. Diane O'Quinn Williams

Page 3

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Miami-Dade County Professional Staff's Development Review

On February 18th, 2004, the Miami-Dade County Development Impact Committee (Executive Council) reviewed the above requests and the proposed development plans in its entirety. Based upon this review, the Executive Council found the proposed development to be consistent with the provisions of the Miami-Dade County Comprehensive Development Master Plan ("CDMP"), the provisions of the Miami-Dade County Code of Ordinances, and compatible with the surrounding area. Specifically, the Executive Council determined that the proposed development was acceptable under every criteria; including the scale and utilization of the site, location of proposed buildings, general compatibility, landscaping treatment, open space, buffering, access, parking layout and circulation, visibility and visual screening, and urban design. Additionally, the following County agencies offered no objection to the approval of the application: (1) the Department of Environmental Resource Management ("DERM"), (2) Public Works, (3) Parks, (4) Miami-Dade Transit, (5) Fire Rescue, (6) Police, (7) Schools, and (8) the Department of Planning and Zoning. Based upon these findings and after reviewing all County agency reports, the Executive Council issued a recommendation supporting the approval of the proposed unified development. A copy of this recommendation is attached hereto and incorporated herein as Appellants' Exhibit "A".

The Zoning Appeals Board

Notwithstanding the above findings and reports, and without first hearing testimony from any of the County's professional staff representatives present at the public hearing, the Zoning Appeals Board summarily denied Appellants' request for approval based upon unsubstantiated claims of non-concurrency in area schools and roadways as well as on the misplaced assumption that an increase in community apartment units will result in an escalation of area crime.

A. **The Order Denying Application No. Z2003000123 Is Not Supported by Substantial, Competent Evidence and Must Be Reversed as a Matter of Law.**

The Zoning Appeals Board's decision to deny the application was not supported by substantial competent evidence and, as such, must be reversed as a matter of law. It is a well-settled principal that local decisions to approve or deny an application for zoning relief must be founded on substantial, competent evidence. Courts reviewing such issues have repeatedly

Ms. Diane O'Quinn Williams

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March 4, 2004

recognized that the recommendations issued by the County's professional staff constitute the substantial, competent evidence required to validate the decision of a local zoning board. *See Dade County v. United Resources, Inc.*, 374 So. 2d 1046 (Fla. 3d DCA 1979). Additionally, the appellate courts have held that staff reports and testimony, as opposed to general recommendations, also constitute substantial, competent evidence on which the zoning authority can rely to support its decision to approve or deny an application. *Norwood-Norland Homeowners' Ass'n v. Dade County*, 511 So. 2d 1009 (Fla. 3d DCA 1987); *see also, Fuller*, 515 So. 2d 1312 (Fla. 3d DCA 1987); *Hillsborough County Bd. Of County Comm'rs v. Longo*, 505 So. 2d 470 (Fla. 2d DCA 1987).

In a clear departure from these well-recognized legal concepts, the Zoning Appeal's Board failed to take into consideration the findings of fact and law recited in the DIC Executive Council's recommendation. In fact, after the public hearing had been closed and without reference to any evidence rebutting the testimony and documentary evidence presented, Chairman Jorge I. Bonseñor indicated that he did not believe that the findings generated in the professional staff's recommendation were accurate or should be afforded any weight. Additionally, several other council members indicated, in clear contradiction to the professional staff findings, that the proposed development was incompatible with the surrounding area, that concurrency does not exist for area schools and roadways, and that an increase in community apartment units will likely result in an escalation of area crime.

When confronted with similar cases, Florida courts have repeatedly determined that such generalized statements, unsubstantiated by fact-based testimony or documentary evidence, does not amount to substantial, competent evidence upon which a zoning authority can base its decision to approve or deny an application. *See Marion County v. Priest*, 786 So. 2d 623 (Fla. 5th DCA 2001); *see also City of Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974); *Grefkowicz v. Metropolitan Dade County*, 389 So. 2d 1041, 1042 (Fla. 3d DCA 1980). As such, the Appellant respectfully submits that the Zoning Appeals Board's decision to deny the application was not based upon competent, substantial evidence and must be vacated as a matter of law.

Ms. Diane O'Quinn Williams

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B. The Zoning Appeals Board's Decision to Deny the Application in Contradiction to the Goals, Policies and Objectives of the CDMP Violated the Essential Requirements of Law.

The Florida Supreme Court in the leading case of *Haines City Community Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995), explained that a departure from the essential requirements of the law means a departure from those requirements of the law which are deemed essential to the administration of justice, namely, (a) a denial of procedural due process of law, or (b) an improper exercise of jurisdiction, or (c) the commission of an error, such as applying an incorrect rule of law, which is so fundamental in character as to fatally infect the judgment and render it void as being a miscarriage of justice. In analyzing this standard, courts have held that the noncompliance with a statute or ordinance applicable to the issues presented, like the County's CDMP in the current appeal, results in a gross miscarriage of justice. *See generally Kirchhoff v. South Florida Water*, 805 So. 2d 848, 849 (Fla. 2d DCA 2001); *see also Bd. of County Comm'rs v. Webber*, 658 So. 2d 1069, 1072 (Fla. 2d DCA 1995).

As set forth in the Executive Council's recommendation of approval, the Village Center and Country Club Towers properties are situated within the County's development infill area. The CDMP interpretive text provides that the County shall vigorously discourage urban sprawl by promoting higher residential densities within the County's urban infill area, especially where future development is located within the County's transition areas. *See* CDMP Land Use Element Policy 1C and Page I-21. Specifically, the CDMP provides that the County shall rejuvenate *decayed areas* (like the Village Center property) by promoting redevelopment and infilling and shall redirect higher density development towards activity centers or areas of high countywide accessibility. *See id.* In the present case, the Zoning Appeals Board did exactly the opposite. In contradiction of the professional staff's findings and reports, the Zoning Appeals Board voted to deny the proposed unified development based upon generalizations of traffic congestion, school overcrowding, and crime. As such, the Appellant submits that the decision of the Zoning Appeals Board was a miscarriage of justice departing from the essential requirements of law and must be vacated.

In addition, as further set forth in the Executive Council recommendation of approval, the CDMP directs the County and its various agencies to assist the private sector in providing much needed affordable housing, such as that which is being proposed in the current application. *See*

Ms. Diane O'Quinn Williams

Page 6

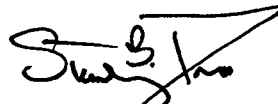
March 4, 2004

generally CDMP Land Use Element, Housing Element, and Transportation Element. Specifically, the Land Use Element provides that approximately 272,000 additional affordable housing units are needed in Miami-Dade County by 2015 and, in 1995, the County estimated a need for 1,758 additional multi-family rental units in census tracts 101.17 and 101.18 which cover both the Country Club Towers and Village Center properties. Nevertheless, once again the Zoning Appeals Board chose to ignore the applicable provisions of the CDMP and voted to deny the application based upon unsubstantiated views of area overcrowding.

In addition to the foregoing, the revitalization of the shopping center was an essential element of the application. Testimony was proffered that the shopping center has failed to generate rate based tenants, was running at occupancy levels of approximately 50 percent for the last several years, and became a breeding ground for crime in the area.

Thank you for your consideration of this appeal. If we can provide you with additional information or documents, please do not hesitate to contact me at (305) 375-6139.

Very truly yours,



Stanley B. Price

Enclosure

cc: Jose Milton
Bill Riley, Esquire

11	52	40
Sec.	Twp.	Range

**ZONING HEARING APPLICATION
MIAMI-DADE COUNTY
DEPARTMENT OF PLANNING & ZONING**

AMENDED
RECEIVED
203-123
NOV 07 2003

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY ra

Date Received

LIST ALL FOLIO #S: 30-2011-003-0010 & 30-2011-005-0010

1. **NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed "Owner's Sworn-to-Consent" and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Jose Milton and Jose Milton Trust

2. **APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:**

Mailing Address: 3211 Ponce De Leon Boulevard, Suite 301

City: Coral Gables State: Florida Zip: 33134 Phone#: (305) 460-6300

3. **OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:**

Owner's Name (Provide name of ALL owners): Same as above

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone#: _____

4. **CONTACT PERSON'S INFORMATION:**

Name: Stanley B. Price, Esquire

Company: Bilzin Sumberg Baena Price & Axelrod LLP

Mailing Address: 200 S. Biscayne Boulevard, Suite 2500

City: Miami

State: Florida

Zip: 33131

Phone#: (305) 350-2374

Fax#: (305) 351-2204

E-mail: SPrice@bilzin.com

5. **LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION**

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

See Exhibit "A" attached hereto and incorporated herein for legal description of the subject property having a

mailing address of 18255-18345 NW 68th Avenue; and

See Exhibit "B" attached hereto and incorporated herein for legal description of the subject property having a

mailing address of 6790 NW 186 Street

6. **ADDRESS OR LOCATION OF PROPERTY** (For location, use description such as NE corner of, etc.)

18255-18345 NW 68th Avenue, more particularly described in Exhibit "A" attached hereto; and

6790 NW 186 Street, more particularly described in Exhibit "B" attached hereto.

7. **SIZE OF PROPERTY** (in acres): 19.312± (divide total sq. ft. by 43,560 to obtain acreage)

8. **DATE** property ☒ acquired ☐ leased: On various dates between January 1980 and October 1993
Lease term: _____ years (month & year)

10. **IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S)**, provide complete legal description of said contiguous property.

Not Applicable.

11. **Is there an option** to purchase ☐ or lease ☐ the subject property or property contiguous thereto? ☒ no ☐ yes (If yes, identify potential purchaser or lessee and complete "Disclosure of Interest" form)

12. **PRESENT ZONING CLASSIFICATION:** BU-1A (18255-18345 NW 68th Avenue) & RU-4L (6790 NW 186 Street)

13. **APPLICATION REQUESTS** (Check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

☒ Modification of previous resolution/plan: Modification of Resolution No. 4-ZAB-98-85, passed and adopted by the Metropolitan Dade County Zoning Appeals Board on the 27th day of March, 1985, affecting only the subject property having a mailing address of 6790 NW 186 Street, more particularly described in the property legal description attached hereto as Exhibit "B".

☒ Modification of Declaration or Covenant: Deletion of three agreements executed on May 5th, 1971, tying the commercial development of the Country Club of Miami Village Center property to plans prepared by Carson Bennett Wright entitled Apartment Complex for Country Club of Miami as recorded in ORB 7397, pages 597 through 603, ORB 7397, pages 604 through 609, and in ORB 7397, pages 620 through 625.

☒ Unusual Use: to permit two entrance features permitting a guardhouse and two separate gated entranceways

☒ Non-Use Variance: to permit the construction of the proposed residential buildings at the Country Club of Miami Village Center property with a setback of 47' from the front West property line where 48.2' is required; to permit the construction of the proposed residential garage building at the Country Club of Miami Village Center property with a setback of 15' from the East side property line where 25' is required; to permit 7' high masonry walls where 6' is permitted

☒ Special Exception: to permit the development and operation of a residential community in the BU-1A pertaining only to the subject property having a mailing address of 18255-18345 NW 68th Avenue, more particularly described in the property legal description attached hereto as Exhibit "A".

14. **Has a public hearing been held on this property within the last year & a half?** ☒ no ☐ yes.
If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number:

15. **Is this hearing as a result of a violation notice?** ☒ no ☐ yes. If yes, give name to whom the violation notice was served: _____ and describe the violation: _____

16. **Describe structures on the property:** Retail shopping plaza (18255-18345 NW 68th Avenue) and
Multi-family apartment complex (6790 NW 186 Street)

17. **Is there any existing use on the property?** ☐ no ☒ yes. If yes, what use and when established?

Use: Various retail uses (18255-18345 NW 68th Avenue) Year: 1974

Use: Apartments (6790 NW 186 Street) Year: 1981

Exhibit "A"

LEGAL DESCRIPTION:

TRACT "A", COUNTRY CLUB OF MIAMI VILLAGE CENTER, according to the plat thereof as recorded in Plat Book 99 at Page 61 of the Public Records of Dade County, Florida.

Exhibit "B"

LEGAL DESCRIPTION:

TRACT "A", COUNTRY CLUB TOWERS SUBDIVISION, according to the plat thereof as recorded in Plat Book 117 at Page 2 of the Public Records of Dade County, Florida.

11	52	40
Sec.	Twp.	Range

**ZONING HEARING APPLICATION
MIAMI-DADE COUNTY
DEPARTMENT OF PLANNING & ZONING**

LIST ALL FOLIO #S: 30-2011-003-0010

Date Received _____

1. **NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed "Owner's Sworn-to-Consent" and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Jose Milton Trust

2. **APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:**

Mailing Address: 3211 Ponce De Leon Boulevard, Suite 301

City: Coral Gables State: Florida Zip: 33134 Phone#: (305) 460-6300

3. **OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:**

Owner's Name (Provide name of ALL owners): Same as above

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone#: _____

4. **CONTACT PERSON'S INFORMATION:**

Name: Stanley B. Price, Esquire

Company: Bilzin Sumberg Baena Price & Axelrod LLP

Mailing Address: 200 S. Biscayne Boulevard, Suite 2500

City: Miami

State: Florida

Zip: 33131

Phone#: (305) 350-2374

Fax#: (305) 351-2204

E-mail: SPrice@bilzin.com

5. **LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION**

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

See Exhibit "A" attached hereto and incorporated herein.

6. **ADDRESS OR LOCATION OF PROPERTY** (For location, use description such as NE corner of, etc.)

18255-18345 NW 68th Avenue, more particularly described in Exhibit "A" attached hereto.

7. **SIZE OF PROPERTY** (in acres): 6.108± (divide total sq. ft. by 43,560 to obtain acreage)

8. **DATE** property ☒ acquired ☐ leased: October 1993. **Lease term:** _____ years
(month & year)

10. **IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S)**, provide complete legal description of said contiguous property.

See Exhibit "B" attached hereto and incorporated herein.

11. **Is there an option** to purchase ☐ or lease ☐ the subject property or property contiguous thereto? ☒ no ☐ yes (If yes, identify potential purchaser or lessee and complete "Disclosure of Interest" form)

12. **PRESENT ZONING CLASSIFICATION:** BU-1A

13. **APPLICATION REQUESTS** (Check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

☒ District Boundary Changes (DBC) [Zone class requested]: change from BU-1A to RU-4

☐ Unusual Use: _____

☐ Use Variance: _____

☐ Alternative Site Development: _____

☐ Special Exception: _____

☐ Modification of previous resolution/plan: _____

☐ Modification of Declaration or Covenant: _____

14. **Has a public hearing been held on this property within the last year & a half?** ☒ no ☐ yes. If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number:

15. **Is this hearing as a result of a violation notice?** ☒ no ☐ yes. If yes, give name to whom the violation notice was served: _____ and describe the violation:

16. **Describe structures on the property:** Retail shopping plaza

17. **Is there any existing use on the property?** ☐ no ☒ yes. If yes, what use and when established?

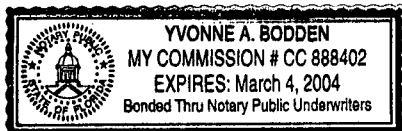
Use: Various retail uses Year: 1974

APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of my knowledge and belief. I understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

OWNER OR TENANT AFFIDAVIT

I, Jose Milton, Trustee of the Jose Milton Trust, being first duly sworn, depose and say that I am the owner tenant of the property described and which is the subject matter of the proposed hearing.



JOSE MILTON TRUST

BY: JOSE MILTON, TRUSTEE

Signature

Notary Public:

Commission Expires:

Sworn to and subscribed to before me
this 19th day of March, 2003.

CORPORATION AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) the ☐ President ☐ Vice-President ☐ Secretary ☐ Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the ☐ owner ☐ tenant of the property described herein and which is the subject matter of the proposed hearing.

Attest: _____

Authorized Signature

Office Held

(Corp. Seal)

Sworn to and subscribed to before me
this _____ day of _____, _____.

Notary Public: _____

Commission Expires: _____

PARTNERSHIP AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the ☐ owner ☐ tenant of the property described herein which is the subject matter of the proposed hearing.

(Name of Partnership)

By _____ %
By _____ %

By _____ %
By _____ %

Sworn to and subscribed to before me
this _____ day of _____, _____.

Notary Public: _____

Commission Expires: _____

ATTORNEY AFFIDAVIT

I, William W. Riley, Jr., Esquire, Bilzin Sumberg Baena Price & Axelrod LLP, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.

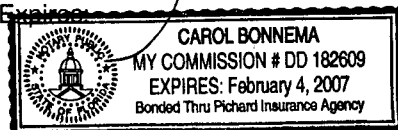
William W. Riley, Jr.

Notary Public:

Commission Expires:

Sworn to and subscribed to before me
this 19th day of March, 2003.

605185V1



RESPONSIBILITIES OF THE APPLICANT

I AM AWARE THAT:

1. The Public Works Department, the Department of Environmental Resources Management (DERM), and other County agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other County boards, and/or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM or Public Works conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property. In addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Applications withdrawn within 60 days of the filing are eligible for a refund of 50% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing, and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3rd District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred, but not approved.
5. In Miami-Dade County v. Omnipoint Holdings, Inc., Case No. 3D01-2347 (Fla. 3rd DCA 2002), the 3rd District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Office is seeking further review. In the interim, the County Attorney's Office is working with the Planning and Zoning Department's professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed..
6. Any covenant to be proffered must be submitted to the Department's Legal Counsel, on County form, at least 1 month prior to the hearing date. The covenant will be reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel can advise as to additional requirements applicable to foreign corporations. Documents submitted to Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date. Legal Counsel may be reached at (305) 375-3075

JOSE MILTON TRUST

BY: JOSE MILTON, TRUSTEE,

Jose Milton

Sworn to and subscribed before me this 13th day of March, 2003. Affiant is personally known to me or has produced _____ as identification.

George A. Bader
(Notary Public)

My commission expires Mar. 4, 2004

PH # _____

Notice to all Applicants

Advisories from the County Attorney's Office

Advisory 1

A recent decision of the Third District Court of Appeal has ruled that zoning applications that are inconsistent with the Comprehensive Development Master Plan cannot be approved by a zoning board based upon considerations of fundamental fairness.

Applicants are advised that if their hearing request is inconsistent with the Comprehensive Development Master Plan and they decide to go forward with the public hearing they cannot be approved under considerations of fundamental fairness, but can only be denied or deferred.

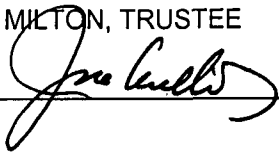
Advisory 2

A panel of judges of the Third District Court of Appeal. recently issued a statement that the standard for non-use variances in the Code of Miami-Dade County is legally insufficient. *Miami-Dade County v. Brennan*, 2001 WL 1472655 (Fla. 3rd DCA 2001). Although the Court was not in a position to issue a binding ruling, it is the opinion of the County Attorney's Office that any non-use variance issued under the present standard would be unlikely to be sustained if challenged in court. The County Attorney's Office is working with the Planning and Zoning Department's professional staff to develop a new standard that will address the Court's concerns. While the new standard is being developed, applicants are advised that any non-use variance granted under the existing standard is subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standard is developed.

By signing below the applicant acknowledges that they have read and understood this Notice.

JOSE MILTON TRUST

BY: JOSE MILTON, TRUSTEE



Date Mar. 13, 2003

OWNERSHIP AFFIDAVIT
FOR
TRUSTEE

STATE OF FLORIDA

Public Hearing No. _____

COUNTY OF MIAMI-DADE

Before me, the undersigned authority, personally appeared Jose Milton, Trustee, hereinafter the Affiant, who being first duly sworn by me, on oath, deposes and says:

1. Affiant is the Trustee of the Jose Milton Trust, with the following address: 3211 Ponce De Leon Boulevard, Suite 301, Coral Gables, Florida 33134
2. The Trust is the fee simple owner of the property which is the subject of the proposed hearing.
3. The subject property is legally described as: See Exhibit "A"
4. Under the terms of the trust, Affiant is legally authorized to file this application for public hearing.
5. Affiant understands this affidavit is subject to the penalties of law for perjury and the possibility of voiding of any zoning granted at public hearing.

JOSE MILTON TRUST

BY: JOSE MILTON, TRUSTEE

Jose Milton

Witnesses:

Charles Hernandez
Signature

Charles M. Hernandez
Print Name

Dina Dominguez
Signature

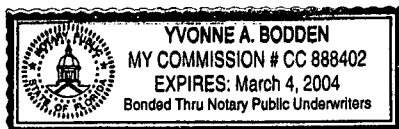
Dina Dominguez
Print Name

Sworn to and subscribed before me on the 13th day of March, 2003. Affiant is personally known to me or has produced _____ as identification.

Yvonne A. Bodden
Notary Public, State of Florida

(Stamp/Seal)

My Commission Expires: Mar. 4, 2004



DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: Not applicable.

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>

If a **TRUST** or **ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: Jose Milton Trust

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
<u>Mr. Jose Milton</u>	<u>100%</u>

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: Not applicable.

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: Not applicable.

NAME AND ADDRESS	Percentage of Stock

Date of contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

JOSE MILTON TRUST

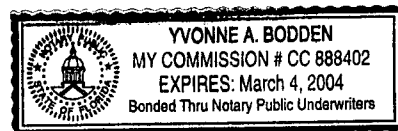
BY: JOSE MILTON, TRUSTEE

Jose Milton

Date Mar. 13, 2003

Sworn to and subscribed before me this 13th day of March, 2003. Affiant is personally known to me or has produced as identification.

Yvonne A. Bodden
(Notary Public)



My commission expires Mar. 4, 2004

* Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.